

AMENDED IN ASSEMBLY JUNE 13, 2012

**SENATE BILL**

**No. 1015**

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**Introduced by Committee on Budget and Fiscal Review**

February 6, 2012

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An act relating to the Budget Act of 2012 to amend Section 706.070 of the Code of Civil Procedure, and to amend Section 19266 of, to add Section 19165 to, and to repeal Part 18 (commencing with Section 38001) of Division 2 of, the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, bill related to the budget.

LEGISLATIVE COUNSEL'S DIGEST

SB 1015, as amended, Committee on Budget and Fiscal Review.  
~~Budget Act of 2012. Taxation: administration.~~

(1) Existing law authorizes the state to issue a withholding order for taxes to collect a state tax liability, including any penalties, accrued interest, and costs, in accordance with certain procedures. Existing law defines "state tax liability" to mean an amount for which the state has a state tax lien created pursuant to specified provisions.

This bill would expand the definition of "state tax liability" to also include any liability under the Personal Income Tax Law, the Corporation Tax Law, or specified franchise and income tax provisions that is due and payable and that is unpaid, as specified.

(2) Existing law imposes various duties on the Franchise Tax Board with respect to the imposition of penalties in connection with tax avoidance, and partially conforms to federal income tax laws with respect to the penalties imposed.

*This bill, in modified conformity with federal income tax laws, would impose a penalty for an erroneous claim for refund or credit, as specified.*

*(3) Existing laws require the Franchise Tax Board to administer specified taxes and collect those taxes from delinquent tax debtors and requires the Franchise Tax Board, in coordination with financial institutions doing business in this state, to operate a Financial Institution Record Match System utilizing automated data exchanges to the maximum extent feasible in order to allow the Franchise Tax Board to match its list of delinquent tax debtors, as defined, with the lists provided by the financial institutions. Existing law authorizes the Franchise Tax Board to disclose specified taxpayer information for purposes of data matching, and provides that the specified use of certain data is a misdemeanor.*

*This bill would expand the definition of delinquent tax debtor to include a person liable for specified taxes, fees, surcharges, debts, penalties, interest, or other amounts required to be paid to the State Board of Equalization or paid or referred to the Employment Development Department, as provided. This bill would authorize the State Board of Equalization and the Employment Development Department to provide the Franchise Tax Board with information relating to delinquent tax debtors, would allow that information to be used in the collection of delinquent amounts under the Financial Institution Record Match System (FIRM), and would require the State Board of Equalization and the Employment Development Department to reimburse the Franchise Tax Board for its costs in the implementation and administration of FIRM.*

*By expanding the definition of an existing crime, this bill would impose a state-mandated local program.*

*(4) Existing law has enacted the Multistate Tax Compact, which contains provisions regarding state tax laws, forms the Multistate Tax Commission, and requires the budget of the Multistate Tax Commission to be funded by party states. Existing law provides that, notwithstanding the provisions of the Multistate Tax Compact, including a provision that would allow a taxpayer to apportion its business income in accordance with a specified 3-factor formula, business income derived from or attributable to sources both within and without this state shall be apportioned between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case*

*of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, business income is apportioned in accordance with a specified 3-factor formula. That law, for taxable years beginning on or after January 1, 2011, allows a taxpayer to apportion its income in accordance with a single sales factor formula, except as provided, pursuant to an irrevocable annual election, as specified.*

*This bill would repeal all provisions related to the Multistate Tax Compact. This bill would find and declare that the doctrine of election provides that an election affecting the computation of tax must be made on an original timely filed return for the taxable period for which the election is to apply and once made is binding, and that the doctrine of election applies to any election that affects the computation of tax, as specified, which does not constitute a change in, but is declaratory of, existing law. This bill would also provide that the repeal of the Multistate Tax Compact in this bill shall not be construed to create any inference that a change in interpretation with respect to the compact or any reference to the compact prior to its repeal is implied by that repeal.*

*(5) This bill would appropriate \$1,000 from the General Fund to the Franchise Tax Board for administrative costs.*

*(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

*(7) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.*

~~*This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2012.*~~

Vote: majority. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 706.070 of the Code of Civil Procedure
- 2     is amended to read:
- 3     706.070. As used in this article:

1 (a) “State” means the State of California and includes any  
2 officer, department, board, or agency thereof.

3 (b) “State tax liability” means an amount for which the state  
4 has a state tax lien as defined in Section 7162 of the Government  
5 Code excluding a state tax lien created pursuant to the Fish and  
6 Game Code.

7 (c) *For purposes of an earnings withholding order for taxes*  
8 *issued by the Franchise Tax Board, “state tax liability” also*  
9 *includes any liability under Part 10 (commencing with Section*  
10 *17001), Part 10.2 (commencing with Section 18401), or Part 11*  
11 *(commencing with Section 23001) of Division 2 of the Revenue*  
12 *and Taxation Code that is due and payable within the meaning of*  
13 *subdivision (b) of Section 19221 of the Revenue and Taxation*  
14 *Code, and unpaid. The amendments to this section by the act*  
15 *adding this subdivision shall apply to any amount that is unpaid*  
16 *on or after the effective date of that act, or any amount that first*  
17 *becomes due and payable, and unpaid, after the effective date of*  
18 *that act.*

19 SEC. 2. Section 19165 is added to the Revenue and Taxation  
20 Code, to read:

21 19165. (a) A penalty shall be imposed under this part for an  
22 erroneous claim for refund or credit in accordance with Section  
23 6676 of the Internal Revenue Code, relating to erroneous claim  
24 for refund or credit, as added by Public Law 110-28, and amended  
25 by Public Law 111-152, except as otherwise provided.

26 (b) Section 6676(c) of the Internal Revenue Code, relating to  
27 noneconomic substance transactions treated as lacking reasonable  
28 basis, is modified to also refer to a transaction described in  
29 paragraph (2) of subdivision (c) of Section 19774.

30 (c) Section 6676(d) of the Internal Revenue Code, relating to  
31 coordination with other penalties, is modified by substituting “a  
32 penalty imposed under Section 19164, Section 19164.5, or Section  
33 19774” for the phrase “a penalty imposed under part II of  
34 subchapter A of chapter 68.”

35 (d) Article 3 (commencing with Section 19031), relating to  
36 deficiency assessments, shall not apply with respect to the  
37 assessment or collection of any penalty imposed by subdivision  
38 (a).

39 (e) Pursuant to the provisions of Chapter 6 (commencing with  
40 Section 19301), a taxpayer may file a claim for refund or credit

1 *for amounts paid in connection with the penalty imposed under*  
2 *this section.*

3 *(f) This section shall apply to any claim filed or submitted on*  
4 *or after July 1, 2012.*

5 *SEC. 3. Section 19266 of the Revenue and Taxation Code is*  
6 *amended to read:*

7 19266. (a) (1) The Franchise Tax Board, in coordination with  
8 financial institutions doing business in this state, shall operate a  
9 Financial Institution Record Match System utilizing automated  
10 data exchanges to the maximum extent feasible.

11 (2) The Franchise Tax Board shall prescribe any rules and  
12 regulations that may be necessary or appropriate to implement this  
13 section. These rules and regulations shall include all of the  
14 following:

15 (A) A structure by which financial institutions, or their  
16 designated data-processing agents, shall receive from the Franchise  
17 Tax Board the file or files of delinquent debtors that the institution  
18 shall match with its own list of accountholders to identify  
19 delinquent tax debtor accountholders at the institution.

20 (B) An option by which financial institutions without the  
21 technical ability to process the data exchange, or without the ability  
22 to employ a third-party data processor to process the data exchange,  
23 may forward to the Franchise Tax Board a list of all accountholders  
24 and their social security numbers or other taxpayer identification  
25 numbers, so that the Franchise Tax Board shall match that list with  
26 the file or files of delinquent tax debtors.

27 (C) Authority for the Franchise Tax Board to exempt a financial  
28 institution from the requirements of this section if the Franchise  
29 Tax Board determines that the financial institution participation  
30 would not generate sufficient revenue to be cost effective for the  
31 Franchise Tax Board.

32 (D) Authority for the Franchise Tax Board to temporarily  
33 suspend the requirements of this section for a financial institution  
34 if the financial institution provides the Franchise Tax Board with  
35 a written notice from its supervisory banking authority that it is  
36 determined to be undercapitalized, significantly undercapitalized,  
37 or critically undercapitalized as defined by FDIC Regulation  
38 325.103(b)(3), (4), and (5) or NCUA Regulation 702.102. The  
39 notice provided pursuant to this subparagraph shall be subject to  
40 the protections of Section 19542.

(b) The Financial Institution Record Match System shall not be subject to any limitation set forth in Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code. However, any use of the information provided pursuant to this section for any purpose other than the collection of delinquent franchise or income tax or other debts referred to the Franchise Tax Board for collection, as imposed under Part 5 (commencing with Section 10701), Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001) amounts identified in paragraphs (1), (2), and (3) shall be a violation of Section 19542.

(1) Delinquent amounts due the board, as imposed under Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), Part 1.7 (commencing with Section 7280), Part 3 (commencing with Section 8601), Part 3.5 (commencing with Section 9401), Part 6 (commencing with Section 11201), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), Part 18.5 (commencing with Section 38101), Part 19 (commencing with Section 40001), Part 20 (commencing with Section 41001), Part 22 (commencing with Section 43001), Part 22.5 (commencing with Section 44000), Part 23 (commencing with Section 45001), Part 24 (commencing with Section 46001), Part 26 (commencing with Section 50101), Part 30 (commencing with Section 55001), or Part 31 (commencing with Section 60001).

(2) Delinquent amounts due the Employment Development Department, as imposed under the Unemployment Insurance Code, or other debts or penalty assessments referred to the Employment Development Department for collection.

(3) Delinquent franchise or income tax or other debts referred to the Franchise Tax Board for collection, as imposed under Part 5 (commencing with Section 10701), Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001).

(c) (1) To effectuate the Financial Institution Record Match System, financial institutions subject to this section shall provide to the Franchise Tax Board on a quarterly basis the name, record address, and other addresses, social security number or other taxpayer identification number, and other identifying information for each delinquent tax debtor, as identified by the Franchise Tax

1 Board by name and social security number or other taxpayer  
2 identification number, who maintains an account at the institution.

3 (2) The first data file created by the Franchise Tax Board for  
4 purposes of matching tax debtor records to financial institution  
5 accountholder records shall be limited to 600,000 tax debtor  
6 records. The number of tax debtor records included in a subsequent  
7 data file created by the Franchise Tax Board may be increased by  
8 no more than 600,000 tax debtor records greater than the number  
9 of tax debtor records included in the immediately preceding data  
10 file until all eligible tax debtor records are included in the data  
11 match file.

12 (d) Unless otherwise required by law, a financial institution  
13 furnishing a report or providing information to the Franchise Tax  
14 Board pursuant to this section shall not disclose to a depositor or  
15 an accountholder, or a codepositor or coaccountholder, that the  
16 name, address, social security number or other taxpayer  
17 identification number, or other identifying information of that  
18 delinquent tax debtor has been received from or furnished to the  
19 Franchise Tax Board.

20 (e) A financial institution shall incur no obligation or liability  
21 to any person arising from any of the following:

22 (1) Furnishing information to the Franchise Tax Board as  
23 required by this section.

24 (2) Failing to disclose to a depositor or accountholder that the  
25 name, address, social security number or other taxpayer  
26 identification number, or other identifying information of that  
27 delinquent tax debtor was included in the data exchange with the  
28 Franchise Tax Board required by this section.

29 (3) Any other action taken in good faith to comply with the  
30 requirements of this section.

31 (f) The Franchise Tax Board may institute civil proceedings to  
32 enforce this section.

33 (g) Any financial institution that willfully fails to comply with  
34 the rules and regulations promulgated by the Franchise Tax Board  
35 for the administration of delinquent tax collections, unless it is  
36 shown to the satisfaction of the Franchise Tax Board that the failure  
37 is due to reasonable cause, shall be assessed a penalty upon notice  
38 and demand of the Franchise Tax Board and collected in the same  
39 manner as tax. The penalty imposed under this section shall be in  
40 an amount equal to fifty dollars (\$50) for each record not provided,

1 but the total imposed on that financial institution for all such  
2 failures during any calendar year shall not exceed one hundred  
3 thousand dollars (\$100,000).

4 (h) For purposes of this section:

5 (1) “Account” means a demand deposit account, share or share  
6 draft account, checking or negotiable withdrawal order account,  
7 savings account, time deposit account, or money market mutual  
8 fund account, regardless of whether the account bears interest.

9 (2) “Financial institution” means:

10 (A) A depository institution, as defined in Section 1813(c) of  
11 Title 12 of the United States Code.

12 (B) An institution-affiliated party, as defined in Section 1813(u)  
13 of Title 12 of the United States Code.

14 (C) A federal credit union or state credit union, as defined in  
15 Section 1752 of Title 12 of the United States Code, including an  
16 institution-affiliated party of a credit union, as defined in Section  
17 1786(r) of Title 12 of the United States Code.

18 (D) A benefit association, insurance company, safe deposit  
19 company, money-market fund, or similar entity authorized to do  
20 business in this state.

21 (3) “Delinquent tax debtor” means any of the following:

22 (A) *Any person liable for any tax, fee, or surcharge amounts,*  
23 *and any penalty, interest, or other amounts required to be paid to*  
24 *the board, where the liability remains unpaid after 30 days from*  
25 *demand for payment by the board, and the person is not making*  
26 *current timely installment payments on the liability under an*  
27 *installment payment agreement as provided by law.*

28 (B) *Any person liable for any amounts required to be paid to*  
29 *the Employment Development Department or for any debts or*  
30 *penalty assessments referred to the Employment Development*  
31 *Department for collection and the person is not making current*  
32 *timely installment payments on the liability under an approved*  
33 *installment payment agreement as provided by law.*

34 (C) Any person liable for any income or franchise tax or other  
35 debt referred to the Franchise Tax Board for collection as imposed  
36 under Part 5 (commencing with Section 10701), Part 10  
37 (commencing with Section 17001), Part 10.2 (commencing with  
38 Section 18401), or Part 11 (commencing with Section 23001),  
39 including tax, penalties, interest, and fees, where the tax or debt,  
40 including the amount, if any, referred to the Franchise Tax Board



1 for collection remains unpaid after 30 days from demand for  
2 payment by the Franchise Tax Board, and the person is not making  
3 current timely installment payments on the liability under an  
4 agreement pursuant to Section ~~19006~~ 19008.

5 (i) A financial institution shall be reimbursed by the Franchise  
6 Tax Board for actual costs incurred to implement the provisions  
7 of this section. Upon receipt of an invoice from the financial  
8 institution, cost reimbursement by the Franchise Tax Board shall  
9 be limited to the following:

10 (1) For one-time startup costs of a financial institution, no more  
11 than two thousand five hundred dollars (\$2,500).

12 (2) For data matching costs of a financial institution, other than  
13 one-time startup costs, no more than two hundred fifty dollars  
14 (\$250) per calendar quarter.

15 (j) The first data exchange for purposes of matching tax debtor  
16 records to financial institution accountholder records shall occur  
17 no earlier than April 1, 2012.

18 (k) This section shall be operative 120 days after the effective  
19 date of the act adding this section and shall apply with respect to  
20 persons that are delinquent tax debtors on and after that date.

21 *(1) Notwithstanding any other provision of law, on or after*  
22 *January 1, 2013, and on a quarterly basis thereafter, the board*  
23 *and the Employment Development Department shall, in the format*  
24 *and manner specified by the Franchise Tax Board, provide their*  
25 *respective delinquent tax debtor information to the Franchise Tax*  
26 *Board for inclusion in the Financial Institutions Records Match*  
27 *System.*

28 *(2) The Franchise Tax Board shall include the delinquent tax*  
29 *debtor information provided by the board and the Employment*  
30 *Development Department in its data file used to match delinquent*  
31 *tax debtor records to financial institution accountholder records.*

32 *(3) The Franchise Tax Board shall provide the board or the*  
33 *Employment Development Department, as applicable, with any*  
34 *matched financial institution accountholder record information*  
35 *resulting from the delinquent tax debtor information provided by*  
36 *the board or the Employment Development Department.*

37 *(4) The board and the Employment Development Department*  
38 *shall reimburse the Franchise Tax Board for any costs incurred*  
39 *by the Franchise Tax Board related to the implementation and*  
40 *administration of this section with respect to delinquent tax debtors*

1 *described in subparagraph (A) or (B), respectively, of paragraph*  
2 *(3) of subdivision (h).*

3 *SEC. 4. Part 18 (commencing with Section 38001) of Division*  
4 *2 of the Revenue and Taxation Code is repealed.*

5 *SEC. 5. The Legislature finds and declares the following:*

6 *(a) The doctrine of election (see generally Pacific Nat. Co. v.*  
7 *Welch (1938) 304 U.S. 191), provides that an election affecting*  
8 *the computation of tax must be made on an original timely filed*  
9 *return for the taxable period for which the election is to apply and*  
10 *once made is binding.*

11 *(b) The doctrine of election described in subdivision (a) applies*  
12 *to any election that affects the computation of tax under Part 10*  
13 *(commencing with Section 17001), Part 10.2 (commencing with*  
14 *Section 18401), and Part 11 (commencing with Section 23001) of*  
15 *Division 2 of the Revenue and Taxation Code, unless otherwise*  
16 *provided.*

17 *(c) Subdivision (b) does not constitute a change in, but is*  
18 *declaratory of, existing law.*

19 *SEC. 6. The repeal of Part 18 (commencing with Section 38001)*  
20 *of Division 2 of the Revenue and Taxation Code in Section 1 of*  
21 *this act shall not be construed to create any inference that a change*  
22 *in interpretation with respect to that part, or any reference to that*  
23 *part, prior to its repeal is implied by this act.*

24 *SEC. 7. There is hereby appropriated one thousand dollars*  
25 *(\$1,000) from the General Fund to the Franchise Tax Board for*  
26 *administrative costs.*

27 *SEC. 8. No reimbursement is required by this act pursuant to*  
28 *Section 6 of Article XIII B of the California Constitution because*  
29 *the only costs that may be incurred by a local agency or school*  
30 *district will be incurred because this act creates a new crime or*  
31 *infraction, eliminates a crime or infraction, or changes the penalty*  
32 *for a crime or infraction, within the meaning of Section 17556 of*  
33 *the Government Code, or changes the definition of a crime within*  
34 *the meaning of Section 6 of Article XIII B of the California*  
35 *Constitution.*

36 *SEC. 9. This act is a bill providing for appropriations related*  
37 *to the Budget Bill within the meaning of subdivision (e) of Section*  
38 *12 of Article IV of the California Constitution, has been identified*  
39 *as related to the budget in the Budget Bill, and shall take effect*  
40 *immediately.*

1     ~~SECTION 1. It is the intent of the Legislature to enact statutory~~  
2     ~~changes relating to the Budget Act of 2012.~~

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